

APPEAL NO. 040924
FILED JUNE 14, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 23, 2004. The hearing officer resolved the disputed issues by determining that the respondent's (claimant) _____, compensable injury does not include depression and that the claimant's impairment rating (IR) is 15%. The appellant (carrier) appeals the IR determination. In his response, the claimant urges affirmance of the IR determination. The extent-of-injury determination has not been appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed.

Section 408.125(c) provides that for injuries occurring on or after June 17, 2001, where there is a dispute as to the correct IR, the report of the Texas Workers' Compensation Commission-selected designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) provides that the designated doctor's response to a request for clarification is also considered to have presumptive weight, as it is part of the designated doctor's opinion. See *also*, Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002. The carrier asserts that the designated doctor's report is not entitled to presumptive weight in this case because he placed the claimant in Diagnosis-Related Estimate (DRE) Cervicothoracic Category III of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides) based on radiculopathy, but there is no objective evidence of radiculopathy. We disagree. The designated doctor, Dr. H, noted in his initial report that "reflexes are a trace at the biceps." In his letter of clarification dated December 17, 2003, Dr. H noted that the claimant exhibited "diminished triceps reflex" during his examination on September 19, 2003. Loss of relevant reflexes can support placement in DRE Cervicothoracic Category III in this case.

Whether the great weight of the other medical evidence was contrary to the report of the designated doctor was a factual question for the hearing officer to resolve. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston

[14th Dist.] 1984, no writ). Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Chris Cowan
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Veronica L. Ruberto
Appeals Judge